TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 123.

THE NORTH AMERICAN TRANSPORTATION AND TRADING COMPANY, AS CLAIMANT OF THE STEAMSHIP "ROANOKE," APPELLANT,

vs.

T. J. KING AND A. WINGE, COPARTNERS AS KING & WINGE, AND W. B. FRASER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

(18,210.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 357.

THE NORTH AMERICAN TRANSPORTATION AND TRADING COMPANY, AS CLAIMANT OF THE STEAMSHIP "ROANOKE," APPELLANT,

vs.

T. J. KING AND A. WINGE, COPARTNERS AS KING & WINGE, AND W. B. FRASER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 18, 1902.

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a In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, as Copartners as King & Winge, Libelants,
vs.
STEAMSHIP "ROANOKE," NORTH AMERICAN TRANSPORTATION & TRADING Co., Claimant; W. B. Fraser, Intervenor. } No. 2018.

Transcript of Record on Appeal.

Appeal from the district court of the United States for the district of Washington, northern division, to the United States Supreme Court.

1 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants,
vs.
THE STEAMSHIP "ROANOKE," HER ENGINES, Boilers, Tackle, Apparel, and Furniture. } In Admiralty. Libel. No. 2018.

To the Honorable Cornelius H. Hanford, judge of said court:

The libel of T. J. King and A. Winge, copartners as King & Winge, residents of said district, against The Steamship "Roanoke," her engines, boilers, boats, tackle, apparel and furniture, whereof J. B. Weaver now is, or late was, master, in a cause of contract for labor and repairs, civil and maritime, alleges as follows:

I.

That during all the times hereinafter mentioned the said libellants were and now are copartners doing business as King & Winge.

II.

That between the 5th day of December 1900 and the 22nd day of December, 1900, these libelants in the port of Seattle, in the district of Washington, furnished materials for the repair of the said steamship "Roanoke," and which were actually used in the repair of said steamship in said district as follows, to wit: Spars and lumber which were of the reasonable value of ninety ($90) dollars.

III.

That between said dates these libellants performed work and labor in said port in said district in the repair of said steamship which was of the reasonable value of two hundred thirty-three ($233.00) dollars.

2 IV.

That the said charges for the said materials furnished and labor performed are such as are usual and customary in said port for materials and labor of the kind so furnished and performed.

V.

That all of said materials were so furnished and all of said work and labor was so performed at the request of George Broom and George Gibson who were contractors of the owners of the said steamship and, who at the time of the furnishing of said materials and the performance of said labor had full charge of the alteration and repair of the said steamship.

VI.

That the said materials were so furnished and the said labor was so performed by these libelants upon the credit of the said steamship.

VII.

That the said steamship "Roanoke" is an American vessel.

VIII.

That the said steamship, her boats, engines, boilers, tackle, apparel and furniture are now within the said district of Washington and the jurisdiction of this court.

IX.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this honorable court.

Wherefore the said libelants pray that process in due form of law according to the course of this honorable court in causes of admiralty and maritime jurisdiction may issue against the said steamship, her engines, boilers, boats, tackle, apparel and furniture and
3 against all persons lawfully intervening or having any interest therein, and that they and each of them may be cited in general and special to answer the premises, and all due proceedings being had that the said vessel, her engines, boilers, boats, tackle, apparel and furniture may be condemned and sold to pay the claim aforesaid, together with costs; and that the said libelants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

PRESTON & EMBREE,
Proctors for Libelants.

STATE OF WASHINGTON, } ss:
County of King, }

T. J. King, being first duly sworn, on oath says: That he is one of the libelants named in the foregoing libel; that he has heard the libel read; knows the contents thereof and believes the same to be true.

T. J. KING.

Subscribed and sworn to before me this 23rd day of May, 1901.

C. S. PRESTON,
Notary Public for the State of Washington, Residing at Seattle.

Indorsed: Libel. Filed in the U. S. district court dist. of Washington May 23, 1901. R. M. Hopkins, clerk, H. M. Walthew, deputy.

4 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libellants, *vs.* THE STEAMSHIP "ROANOKE," HER Engines, Boilers, Tackle, Apparel, and Furniture.	In Admiralty. No. 2018. Stipulation for Costs.

Know all men by these presents that we, T. J. King and A. Winge, copartners doing business in the name of King & Winge, the libellants above named, as principals, and J. S. Miller as sureties, are held and firmly bound unto the said steamship "Roanoke" and to any and all persons that may intervene or claim an interest in the said steamship, in the sum of two hundred and fifty and no/100 ($250.00) dollars, for the payment of which well and truly to be paid, we jointly and severally bind ourselves, our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals and dated this 23rd day of May, 1901.

Whereas the said principals have filed in the above-entitled court their libel against the said steamship "Roanoke" praying for the seizure and condemnation of the said steamship,

Now, therefore, if the said principals shall pay all costs awarded against them by this court, or in case of appeal, by the appellate court, in said proceedings, then this obligation shall be null and void, otherwise to remain in full force and effect. And the said sureties hereby consent that in case of default or contumacy on the part of the said principals, execution to the amount named
5 in said bond may issue against his goods, chattels and lands.

Witness our hands this 23rd day of May, 1901.

T. J. KING.
KING & WINGE.
J. S. MILLER.

STATE OF WASHINGTON, } ss:
County of King, }

J. S. Miller, being first duly sworn, on oath says that he is the surety named in and who signed the foregoing bond; that he is a *bona fide* resident of the district of Washington and is worth the sum of two hundred fifty ($250.00) dollars over and above his debts and liabilities, exclusive of property exempt from execution.

J. S. MILLER.

Subscribed and sworn to before me this 23rd day of May, 1901.

C. S. PRESTON,
Notary Public for the State of Washington,
Residing at Seattle.

Indorsed: Stipulation of libelants for costs. Filed in the U. S. district court dist. of Washington. May 23 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

6 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants, *vs.* THE STEAMSHIP "ROANOKE," HER ENGINES, BOILERS, TACKLE, APPAREL, and FURNITURE.	No. 2018. In Admiralty. Intervening Libel.

To the Honorable Cornelius H. Hanford, judge of said court:

The intervening libel of W. B. Fraser, a resident of said district, doing business in the name of the Acme Iron Works against the Steamship "Roanoke," her engines, boilers, boats, tackle, apparel and furniture whereof J. B. Weaver now is or late was master, in a cause of labor and materials furnished, civil and maritime, alleges as follows:

I.

That between the 9th day of December, 1900, and the 25th day of December, 1900, this intervening libelant W. B. Fraser, in the port of Seattle in the district of Washington, furnished certain materials for the repair of said steamship and performed certain work and labor in making said repairs, which materials were actually used in the repair of said steamship, as follows, to wit:

Cutting gooseneck out of old boom on board ship and labor of smith and helper	$3.50
Two (2) 1½-inch shackles and pins and one (1) 2-inch shackle and pin	9.00
Four (4) new bands with bolts and links, 325 lbs. at 15c	48.75
7 ft. 6 inch- of ⅞ tested chain	5.75
1 ft. 6 inch- steel thimble and link	3.50
One (1) new half band for masts and boom, one gooseneck and two (2) swivel pins, 365 # at 15c	54.75
One (1) new end on old gooseneck and old iron, with work and labor	25.00
Total	150.25

7 II.

That all of said materials were so furnished and said labor so performed in the district of Washington at the request of George Broom

and George Gibson who were the contractors in charge of the repair of said vessel for the owners thereof. And that this intervening libelant in furnishing said materials and performing said labor relied upon the credit of said steamship.

III.

That said steamship is an American vessel.

IV.

That said steamship, her engines, boilers, boats, tackle, apparel and furniture is now within the district of Washington and the jurisdiction of this court.

V.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this honorable court.

Wherefore the said intervening libelant prays that process in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said steamship, her engines, boilers, boats, tackle, apparel and furniture and against all persons lawfully intervening or having any interest therein and that they and each of them may be cited in general and special to answer the premises and all due proceedings being had *and* that the said vessel, her engines, boilers, boats, tackle, apparel and furniture, may be condemned and sold to pay the claim of this intervening libelant aforesaid, together with costs. And that the said intervening libelant may have such other and further relief
8 in the premises as in law and justice he may be entitled to receive.

PRESTON & EMBREE,
Proctors for Libelant Intervening.

STATE AND DISTRICT OF WASHINGTON, } ss:
County of King, }

W. B. Fraser being first duly sworn, on his oath says: That he is the intervening libelant named in the foregoing libel; that he has heard the intervening libel read, knows the contents thereof and believes the same to be true.

W. B. FRASER.

Subscribed and sworn to before me this 23rd day of May 1901.

C. S. PRESTON,
Notary Public for the State of Washington,
Residing at Seattle.

Indorsed: Intervening libel of W. B. Fraser. Filed in the U. S. district court dist. of Washington. May 23, 1901. R. M. Hopkins, clerk, H. M. Walthew, deputy.

9 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants,
vs.
THE STEAMSHIP "ROANOKE," HER Engines, Boilers, Tackle, Apparel, and Furniture.

In Admiralty. No. 2018. Intervenor's Stipulation for Costs.

Know all men by these presents that I, W. B. Fraser, the intervening libelant herein, as principal, and David Zerwekh, as surety, are held and firmly bound unto the said steamship "Roanoke" and to any and all persons that may intervene or claim an interest in the said steamship, in the sum of two hundred fifty ($250.00) dollars, for the payment of which sum well and truly to be made, we jointly and severally bind ourselves our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals and dated this 23rd day of May, 1901.

Whereas the said principal has filed in the above-entitled court his intervening libel against the said steamship Roanoke praying for the seizure and condemnation of the said steamship,

Now, therefore, if the said principal shall pay all costs awarded against him by this court, or in case of appeal by the appellate court in said proceedings, then this obligation shall be null and void, otherwise to remain in full force and effect, and said surety hereby consents that in case of default or contumacy on the part of the said principal, execution to the amount named in this bond may issue against his goods, chattels and lands.

Witness our hands this 23rd day of May, 1901.

W. B. FRASER.
DAVID ZERWEKH.

10 STATE AND DISTRICT OF WASHINGTON, *County of King.* } ss:

David Zerwekh, being first duly sworn, on his oath says: That he is the surety named in and who signed the foregoing bond; that he is a *bona fide* resident of the State and district of Washington, and is worth the sum of two hundred fifty ($250.00) dollars over and above all his debts and liabilities, exclusive of property exempt from execution.

DAVID ZERWEKH.

Subscribed and sworn to before me this 23rd day of May, 1901.

C. S. PRESTON,
Notary Public for the State of Washington, Residing at Seattle.

Indorsed: Intervenor's stipulation for costs. Filed in the U. S. district court dist. of Washington May 23 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

11 In the United States District Court for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Libellants,
vs.
S. S. ROANOKE, HER FURNITURE, ETC.; W. B. Fraser, Intervening Libelant. } In Admiralty. No. 2018.

To the Honorable Cornelius H. Hanford, judge of said court:

North American Transportation and Trading Company, owners of the said S. S. Roanoke, her tackle, apparel and furniture, intervening for its interest in the said vessel, her tackle, etc., appear before this honorable court and claim the said vessel, her tackle, etc., and state that it is the true and *bona fide* owner thereof, and that no other person is the owner thereof; wherefore it prays to be admitted to defend accordingly, and that the said court will be pleased to decree a restitution of the same to it, and otherwise right and justice to administer in the premises.

NORTH AMERICAN TRANSPORTATION & TRADING CO.,
By R. B. SNOWDON, *Secretary.*

Sworn to May 23, 1901, before me,
EDWARD S. BYRNES,
Notary Public. [NOTARIAL SEAL.]

BAUSMAN & KELLEHER,
Proctor for Claimant.

Indorsed: Claim of North American Transportation & Trading Co. Filed in the U. S. district court dist. of Washington May 23 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

12 In the United States District Court for the District of Washington, Northern Division. In Admiralty. No. 2018.

Whereas a libel was filed in this court on the 23 day of May A. D. 1901, by T. J. King and A. Winge, libelants, and W. B. Fraser, intervening libelant, against S. S. Roanoke, for the reasons and causes in said libel mentioned, and whereas a claim has been filed in the said cause by North American Transportation and Trading Co. and the said North American Transportation and Trading Company and the American Bonding and Trust Company of Baltimore City, *his* surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said claimant or its surety execution for the sum of two hundred and fifty dollars may issue against their goods, chattels and lands;

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned, and each of them is hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all costs and

expenses which shall be awarded against it by the final decree of this court or upon an appeal, by the appellate court.

NORTH AMERICAN TRANSPORTATION & TRADING CO.,
By R. B. SNOWDON, *Secretary.*
THE AMERICAN BONDING AND TRUST COMPANY OF BALTIMORE CITY,
[SEAL.] By FREDERICK A. WING, *Vice-Pres't.*
Attest: FRANK M. GUION, *Ass't Sec'y.*

Taken and acknowledged this 23 day of May 1901 before me.
[NOTARIAL SEAL.] EDWARD S. BYRNES,
Notary Public in and for the State of Washington, Residing at Seattle, Wash.

(Revenue stamps 2½c. affixed and cancelled.)

Indorsed: Claimant's stipulation for costs and expenses. Filed in the U. S. district court dist. of Washington May 23 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

13 District Court of the United States for the District of Washington.

Know all men by these presents: That we North American Transportation and Trading Company as principal, and the American Bonding and Trust Company of Baltimore City as sureties, are held and firmly bound unto C. W. Ide, Esquire, marshal of the United States, for the district of Washington, in the sum of one thousand dollars, to be paid to the said marshal, for the payment of which, well and truly to be made, we each bind ourselves, and each of our heirs, executors, administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 23rd day of May in the year of our Lord one thousand nine hundred and one.

Whereas a libel and intervening libel were filed in the district court of the United States for the northern division, district of Washington, on the 23rd day of May in the year of our Lord one thousand nine hundred and one by T. J. King and A. Winge, libelants, and W. B. Fraser, intervening libellant, against the S. S. Roanoke, her furniture, etc., for the sum of three hundred and twenty-three dollars and one hundred fifty $\frac{25}{100}$ dollars, respectively, on which process of attachment has issued, and the said S. S. Roanoke is in custody of the said marshal under the said attachment, and, whereas, North American Transportation and Tradin- Company has applied for a discharge of said S. S. Roanoke from the custody of the said marshal, and has filed a claim claiming the said S. S. Roanoke and has filed a stipulation for the claimant's costs pursuant to the rules and practice of the said court:

Now, therefore, the condition of this obligation is such, that if the above-bounden North American Transportation and Trading Company shall abide by and answer the decree of this court, in

such cause, then this obligation shall be void, otherwise the
14 same shall be and remain in full force and virtue.

NORTH AMERICAN TRANSPORTATION & TRADING CO.,
By R. B. SNOWDON, *Secretary.*
[SEAL.] THE AMERICAN BONDING AND TRUST COMPANY OF BALTIMORE CITY,
By FREDERICK A. WING, *Vice-Pres't.*

Attest:

FRANK M. GUION, *Ass't Sec'y.*

Signed, acknowledged and delivered before me this 23 day of May 1901.

EDWARD S. BYRNES,
Notary Public in and for the State of Washington, Residing at Seattle, Wash. [NOTARIAL SEAL.]

(Revenue stamps 2½c. affixed and cancelled)

I approve of the sufficiency of the sureties to the within bond. Dated at Seattle, this 23rd day of May 1901.

C. H. HANFORD, *Judge.*

Indorsed: Bond to U. S. marshal under section 941 of the Revised Statutes of the United States. Filed in the U. S. district court dist. of Washington. May 23 1901 R. M. Hopkins, clerk H. M. Walthew, deputy.

15 DISTRICT OF WASHINGTON:

[Seal U. S. Dist. Ct.]

The President of the United States of America to the marshal of the United States for the district of Washington, Greeting:

Whereas, a libel hath been filed in the United States district court for the district of Washington, on the 23rd day of May in the year of our Lord one thousand nine hundred & one by T. J. King and A. Winge, copartners as King & Winge, against Steamship Roanoke, her engines, boilers, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship or vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said steamship or vessel, her tackle, etc., may for the causes in the said libel mentioned be condemned and sold to pay the demands of the libellant,

You are therefore hereby commanded to attach the said steamship or vessel, her tackle, etc., and to retain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the northern divis-

ion of the district of Washington, on the 6th day of June, A. D. 1901, at ten o'clock in the forenoon of the same day, if that
16 day shall be a day of jurisdiction—otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Hon. C. H. Hanford, judge of the said court, at the city of Seattle, in the northern division of the district of Washington, this 23rd day of May in the year of our Lord one thousand nine hundred & one and of our Independence the one hundred and 25th.

R. M. HOPKINS, *Clerk*,
By A. N. MOORE,
Deputy Clerk.

PRESTON & EMBREE,
Proctors for Libellant.

OFFICE OF U. S. MARSHAL, } ss:
District of Washington, }

In obedience to the within monition, I attached the steamship "Roanoke," therein described, on the 23rd day of May, 1901, and have given due notice to all persons claiming the same that this court will, on the 6th day of June, 1901 (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same. And that on the 23rd day of May 1901, I released the said vessel upon receiving a notice of bonding signed by the clerk of the U. S. district court.

Date May 23rd, 1901.

C. W. IDE,
U. S. Marshal,
By H. W. TYLER,
Deputy Marshal.

Marshal's Fees and Expenses.

For serving attachment and monition	2.00
Miles traveled, 2 at 6 cents per mile	.12
Keeper's fees, 1 day at $2.50 per day	2.50
Releasing vessel on bonding	.50
Total	5.12

Indorsed: Monition and attachment. Filed in the U. S. district court dist. of Washington May 25 1901 R. M. Hopkins, clerk, A. N. Moore, deputy.

17 DISTRICT OF WASHINGTON:

[Seal U. S. Dist. Ct.]

The President of the United States of America to the marshal of the United States for the district of Washington, Greeting:

Whereas, an intervening libel hath been filed in the United States district court for the district of Washington, on the 23rd day of May in the year of our Lord one thousand nine hundred & one by intervenor W. B. Fraser, in the case of T. J. King and A. Winge, copartners as King & Winge, against Steamship Roanoke, her engines, boilers, tackle, apparel and furniture, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship or vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said steamship or vessel, her tackle, etc., may for the causes in the said libel mentioned be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said steamship or vessel, her tackle, etc., and to retain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the northern division of the district of Washington, on the 6th day of June, A. D. 1901, at ten o'clock in the forenoon of the same day, if that
18 day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Hon. C. H. Hanford, judge of the said court, at the city of Seattle, in the northern division of the district of Washington, this 23rd day of May, in the year of our Lord one thousand nine hundred & one and of our Independence the one hundred and 25th.

R. M. HOPKINS, *Clerk*,
By H. M. WALTHEW,
Deputy Clerk.

PRESTON & EMBREE,
Proctors for Libellant.

OFFICE OF U. S. MARSHAL, } ss:
District of Washington, }

In obedience to the within monition, I attached the steamship Roanoke therein described, on the 23rd day of May 1901 and have given due notice to all persons claiming the same that this court will, on the 6th day of June 1901 (if that day should be a day of

jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same. And that on the 23rd day of May 1901 I released the said vessel upon receiving a notice of bonding, signed by the clerk of the U. S. district court.

Date May 23rd, 1901.

C. W. IDE,
U. S. Marshal,
By H. W. TYLER,
Deputy Marshal.

Marshal's Fees and Expenses.

For serving monition and attachment	2.00
Total	2.00

Indorsed: Monition and attachment. Filed in the U. S. district court dist. of Washington May 25 1901 R. M. Hopkins, clerk, A. N. Moore, deputy.

19 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants, *vs.* THE STEAMSHIP "ROANOKE," HER ENGINES, Boilers, Tackle, Apparel, and Furniture.	Answer to Libel of King & Winge.

To the Honorable C. H. Hanford, judge of the above-entitled court:

The answer of the claimant and owner, North American Transportation & Trading Company, to the libel of King & Winge, alleges as follows:

I.

It admits that libelants are partners as alleged, that they furnished material and performed labor for the "Roanoke" as alleged in paragraphs II and III, that these materials and labor were of the value alleged, that they were furnished and performed at the request of the contractors named, then in charge of the alteration and repair, as contractors with this owner. It also admits that the labor and material were furnished on the credit of the ship, by the libelants, to this extent that libelants believed they had a lien on the ship for their labor and material by virtue of the law, but that the credit of the ship was in any other respect pledged or contemplated, this claimant denies.

And further answering this owner and claimant says:

I.

That claimant is and at all times herein mentioned was a corporation organized and existing under the laws of the State of Illinois.

Its head office at all times herein mentioned is and was in the city of Chicago in that State, and there reside and resided its
20 president and general manager. It maintains, and at all times herein mentioned, maintained agencies at Seattle and at various points on the Yukon river in Alaska, and in Canada, and its credit was high.

II.

At all the times herein mentioned the "Roanoke" was an ocean-going steamship, registered at Chicago in the State of Illinois, under the navigation laws of the United States, and bearing the name of Chicago on her stern. Until 1898 she was employed on the Atlantic coast, was in that year purchased by this claimant and since then has been engaged in ocean traffic, during the summer, between Seattle and the mouth of the Yukon, and during the winter between San Francisco and southern ports.

III.

At no time did this claimant order of libelants or either of them any of the labor or material set forth in the libel, but these labor and materials were furnished by them on the order of the contractors. Those contractors this claimant settled with, before the filing of this libel, by payment in full in the sum of seven hundred and sixty-four and $\frac{99}{100}$ dollars for all the material and labor set forth in the libel. This payment was made without any knowledge on claimant's part that any of these materials or labor were unpaid for by the contractor or at all.

IV.

Libelants claim a lien under the statutes of the State of Washington, known as sections 5953 and 5954 of Bellinger's Code and Statutes of the State. The lien attempted to be conferred by those statutes is, in this instance, void, because in violation of the 8th section of the first article of the Constitution of the United States giving to Congress the power to regulate commerce among
21 the several States, and constitutes an illegal burden upon interstate commerce, and is in violation also of the 14th article of the Constitution of the United States in that it deprives this claimant of *his* property without due process of law and without the equal protection of the laws, and is in violation of the second section of the third article of the Constitution of the United States conferring upon the courts of the United States admiralty and maritime jurisdiction.

V.

That all and singular the premises are true.

Wherefore this claimant prays that this honorable court would be pleased to pronounce against the libel aforesaid and to condemn the

libelants in costs, and otherwise law and justice to administer in the premises.

BAUSMAN & KELLEHER,
Proctors for Claimant.

UNITED STATES OF AMERICA,
Dist. & State of Washington, County of King, } ss:

R. B. Snowdon, being first duly sworn, on oath says that he is secretary of the claimant North American Transportation & Trading Co. named in the foregoing answer, that he has read the same, knows the contents thereof, and that the foregoing answer is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

R. B. SNOWDON.

Subscribed and sworn to before me this 31st day of May, 1901.
[NOTARIAL SEAL.] EDWARD S. BYRNES,
Notary Public in and for the State of Washington, Residing at Seattle, Wash.

22 Due service of within answer this 1 day of June 1901 duly admitted.

PRESTON & EMBREE,
Attorneys for Libelants & Intervenor.

Indorsed: Answer to libel. Filed in the U. S. district court dist. of Washington Jun- 3 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

23 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants, *vs.* THE STEAMSHIP "ROANOKE," HER ENGINES, Boilers, Tackle, Apparel, and Furniture.	Answer to Intervening Libel of Fraser.

To the Honorable C. H. Hanford, judge of the above-entitled court:

The answer of the claimant and owner, North American Transportation & Trading Company to the intervening libel of W. B. Fraser alleges as follows:

It admits that intervenor furnished material and performed labor on the Roanoke as alleged in paragraph I, that these materials and labor were of the value alleged, and that they were furnished and performed at the request of the contractors named then in charge of the alteration and repair as contractors with this owner. It also admits that the labor and material were furnished on the credit of the ship by intervenor to this extent that intervenor believed he

had a lien on the ship for his labor and material by virtue of law, but that the credit of the ship was in any other respect pledged or contemplated this claimant denies.

And further answering this claimant says:

I.

The claimant is and at all times herein mentioned was a corporation organized and existing under the laws of the State of Illinois. Its head office at all times herein mentioned is and was in the city of Chicago in that State, and there reside and resided its president and general manager. It maintains, and at all times herein mentioned, maintained agencies at Seattle and at various points
24 on the Yukon river in Alaska, and in Canada, and its credit was high.

II.

At all the times herein mentioned the Roanoke was an ocean-going steamship, registered at Chicago, in the State of Illinois, under the navigation laws of the United States, and bearing the name of Chicago on her stern. Until 1898 she was employed on the Atlantic coast, was in that year purchased by this claimant, and since then has been engaged in the ocean traffic during the summer between Seattle and the mouth of the Yukon, and during the winter between San Francisco and southern ports.

III.

At no time did this claimant order of intervenor, *or either of them*, any of the labor or material set forth in the libel, but these labor and material- were furnished by him on the order of the contractors. Those contractors this claimant settled with, before the filing of this libel, by payment in full in the sum of seven hundred and sixty-four and $\frac{99}{100}$ dollars for all the material and labor set forth in the libel. This payment was made without any knowledge on claimant's part that any of these materials or labor were unpaid for by the contractor, or at all.

IV.

Intervenor claims a lien under the statutes of the State of Washington, known as sections 5953 and 5954 of Bellinger's Code and Statutes of the State. The lien attempted to be conferred by those statutes is in this instance void, because in violation of the 8th section of the first article of the Constitution of the United States, giving to Congress the power to regulate commerce among the several States, and constitutes an illegal burden upon inter-
25 state commerce, and is in violation also of the 14th article of the Constitution of the United States, in that it deprives this claimant of *his* property without due process of law, and without the equal protection of the laws, and is in violation of the second section of the third article of the Constitution of the United States conferring upon the courts of the United States admiralty and maritime jurisdiction.

V.

That all and singular the premises are true.

Wherefore this claimant prays that this honorable court would be pleased to pronounce against the libel aforesaid and to condemn the intervenor in costs, and otherwise law and justice to administer in the premises.

BAUSMAN & KELLEHER,
Proctors for Claimant.

UNITED STATES OF AMERICA,
Dist. & State of Washington, County of King, } ss:

R. B. Snowdon, being first duly sworn, on oath says that he is secretary of the claimant North American Transportation & Trading Co. named in the foregoing answer; that he has read the same, knows the contents thereof, and that the foregoing answer is true of his own knowledge, except as to the matters therein stated to be on information and belief and as to those matters he believes it to be true.

R. B. SNOWDON.

Subscribed and sworn to before me this 31st day of May 1901.

EDWARD S. BYRNES,
[NOTARIAL SEAL.] *Notary Public in and for the State of Washington. Residing at Seattle, Wash.*

26 Due service of within answer this 1st day of June 1901 duly admitted.

PRESTON & EMBREE,
Attorneys for Libelants & Intervenor.

Indorsed: Answer to libel of intervenor Fraser. Filed in the U. S. district court dist. of Washington Jun- 3 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

27 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING ET AL., Libelants,
vs.
THE STEAMSHIP "ROANOKE," ETC. } No. 2018. Libelants' Exceptions to Claimant's Answer.

To the Honorable Cornelius H. Hanford, judge of said court:

The libelants T. J. King and A. Winge, except to the answer of the North American Transportation and Trading Company herein, as follows:

I.

They except to the whole of the affirmative matter in said answer, for the reason that the same is insufficient in law to constitute any answer or defense to the libel herein.

Wherefore libellants pray that the affirmative defense in said an-

swer be held insufficient and that a decree pass as prayed in the libel herein.

PRESTON & EMBREE,
Proctors for Libellants.

To Messrs. Bausman & Kelleher, proctors for claimant herein:

You will please take notice that the exceptions above will be brought on for hearing before the court in the afternoon of Thursday, June 6th, 1901, or as soon thereafter as counsel can be heard.

PRESTON & EMBREE,
Proctors for Libellants.

28 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Libellants,
vs.
THE STEAMSHIP ROANOKE, ETC.
} No. 2018. Exceptions of Intervening Libellant, Fraser, to the Answer.

To the Honorable Cornelius H. Hanford, judge of said court:

The intervening libelant, W. B. Fraser, excepts to the answer of the North American Transportation & Trading Company herein, as follows:

I.

Excepts to all of the affirmative portion of the answer to the intervening libel for the reason that the same is insufficient in law to constitute an answer or defense to the intervening libel herein.

Wherefore this intervening libellant prays that the affirmative portion of said answer be held insufficient and that a decree pass as prayed in the intervening libel herein.

PRESTON & EMBREE,
Proctors for Intervening Libellant, W. B. Fraser.

To Messrs. Bausman & Kelleher, proctors for claimant herein:

The exceptions above will be brought on for hearing before the court in the afternoon of Thursday, June 6th, 1901, or as soon thereafter as counsel can be heard.

PRESTON & EMBREE,
Proctors for Intervening Libellant.

Service and receipt of a copy of the within exceptions are hereby admitted this June 4, 1901.

BAUSMAN & KELLEHER,
Proctors for Claimant.

Indorsed: Intervening libellant's and libellants' exceptions to claimant's answer. Filed in the U. S. district — dist. of Washington Jun- 4 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

29 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants,
vs.
THE STEAMSHIP ROANOKE, HER ENGINES, BOILERS, Tackle, Apparel, and Furniture. } Decree.

This cause coming on to be heard on exception of libelants and of intervening libelants to claimant's answer, and these having been fully heard, it is ordered that both the exceptions be and they are hereby sustained, to which claimant singly excepts and the exception is allowed.

And claimant now declining to plead further and electing to stand upon each of its answers it is further ordered and decreed that libelants T. J. King and A. Winge, recover against claimant North American Transportation & Trading Company and its stipulator the sum of three hundred and twenty-three dollars with interest from this date and costs, and that they have execution therefor, and that intervening libelant W. B. Fraser recover against claimant North American Transportation & Trading Co. and its stipulator, the sum of one hundred and fifty and $\frac{25}{100}$ dollars with interest from this date and costs. To this decree claimant excepts and its exception is allowed.

C. H. HANFORD, *Judge.*

Dated this 6th day of June, 1901.

Indorsed: Decree. Filed in the U. S. district court, dist. of Washington Jun-7 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

30 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants,
vs.
THE STEAMSHIP ROANOKE, NORTH AMERICAN Transportation & Trading Co., Claimant. } Appeal and Order Allowing Appeal.

The above-named claimant North American Transportation & Trading Co., considering itself aggrieved by the decree herein dated June 6, 1901, does hereby appeal therefrom and from each and all of it to the Supreme Court of the United States and prays that this its appeal may be allowed, and that a transcript of the record, proceedings and papers upon which that decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

BAUSMAN & KELLEHER,
Proctors for Claimants.

Dated June 7th, 1901.

On this 7th day of June, 1901, it is ordered that an appeal be allowed as prayed for.

C. H. HANFORD,
District Judge.

Indorsed: Appeal and order allowing appeal. Filed in the U. S. district court dist. of Washington Jun-7 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

31 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants,
vs.
THE STEAMSHIP ROANOKE, NORTH AMERICAN Transportation & Trading Co., Claimant.
} Assignment of Error.

The above-named claimant, North American Transportation & Trading Co., comes now and says that in the record and proceedings in the above-entitled cause and in the decree therein dated June 6, 1901, there is manifest error, to wit:

I.

The court erred in sustaining the exception of libelants to the answer of this claimant.

II.

The court erred in sustaining the exception of intervening libelant to the answer of this claimant.

III.

The court erred in entering a decree against this claimant in favor of the libelants and intervening libelant.

Wherefore, claimant prays that this its assignment of errors be entered of record and that upon the hearing of this appeal it be adjudged by the United States Supreme Court that the decree herein be reversed in all things, and that claimant be granted relief according to its answers.

June 7th, 1901.

NORTH AMERICAN TRANSPORTATION & TRADING CO.,
By BAUSMAN & KELLEHER, *Its Proctors.*

Indorsed: Assignment of errors. Filed in the U. S. district court, dist. of Washington Jun-7 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

32 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants,
vs.
THE STEAMSHIP "ROANOKE," NORTH AMERICAN Transportation & Trading Company, Claimant.
} Bond on Appeal and Supersedeas.

Know all men by these presents, that we North American Transportation & Trading Co. as principal, and the American Bonding and Trust Company of Baltimore City, as surety, are held and firmly bound unto T. J. King and A. Winge, copartners as King & Winge, and to W. B. Fraser and to each and every of them, in the sum of fifteen hundred dollars ($1500.00) to be paid to each or all of them, and for the payment of which, we bind ourselves, our, and each of our successors, jointly and severally, firmly by these presents:

The condition of the foregoing bond is this—

Whereas the above-named King & Winge and the above-named Fraser, did on the seventh day of June, 1901, recover against the above-bounden North American Transportation & Trading Co., by decree that day dated herein, the sum of three hundred and twenty-three and of one hundred and fifty and $\frac{25}{100}$ dollars, respectively, and

Whereas, the North American Transportation and Trading Co. has appealed to the Supreme Court of the United States to reverse that decree;

Now, if the above-named North American Transportation and Trading Company shall prosecute its appeal to effect and answer all damages and costs, if it fail to make its appeal good, then this obligation shall be null and void, otherwise in full force and effect.

In witness whereof the said principal and said surety have
33 caused these presents to be executed by its duly authorized officers and their corporate seals, respectively, to be hereunto attached this seventh day of June, A. D. 1901.

NORTH AMERICAN TRANSPORTATION & TRADING COMPANY,
By R. B. SNOWDON, *Its Sec'y.*
[SEAL.] THE AMERICAN BONDING AND TRUST COMPANY OF BALTIMORE CITY,
By FREDERICK A. WING, *Its Vice-President.*

Attest: CHARLES S. HILLS,
Its Assistant Secretary.

(5c. revenue stamp affixed and cancelled.)

The foregoing bond approved this 7th day of June 1901.

C. H. HANFORD,
District Judge.

Indorsed: Bond on appeal and supersedeas. Filed in the U. S district court dist. of Washington Jun- 7 1901 R. M. Hopkins, clerk H. M. Walthew, deputy.

34 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WING, Copartners as King & Winge, Libelants,
vs.
THE STEAMSHIP ROANOKE, NORTH American Transportation & Trading Co., Claimant.
} Certified Question on Appeal.

I, C. H. Hanford, district judge by whom the decree herein was signed, do now, on the 7th day of June, 1901, being the June term at which the decree was signed and entered, certify as follows:

King and Winge, libelants, allege that between December 5th and 22nd in the port of Seattle, Washington, they had furnished spars and timber of the reasonable value of ninety dollars, and performed labor of the reasonable value of two hundred and thirty-three dollars, for the repair of the steamship Roanoke, at the request of its owner's contractors, who "had full charge of the alteration and repair of the said steamship." This they allege was done on the credit of the Roanoke, which was an American vessel.

The intervening libelant, W. B. Fraser, made the same allegations and claimed the sum of one hundred and fifty dollars and twenty-five cents.

The North American Transportation & Trading Co. appeared as claimant and owner and the vessel was released upon its stipulation.

It admitted all the allegations of the libel except that the work was done on the credit of the ship, which it denied except that it admitted that libelants had acted under the belief that they had a lien by virtue of law. It then alleged its incorporation and existence under the laws of the State of Illinois, the residence there at all times of its president and general manager, its maintaining only agencies at Seattle and at other places in Alaska and Canada,
35 and its enjoying a high credit. The Roanoke it alleged to be an ocean-going vessel registered at Chicago, Illinois, under the navigation laws of the United States, with the name of Chicago painted on her stern. She was alleged to have been purchased by claimant in 1898 on the Atlantic coast, and, upon the Pacific coast since that time employed between Seattle and the mouth of the Yukon in the summer, and between San Francisco and southern ports in the winter. It was further alleged that the claimant had never given any order for the material and labor described in the libel and that these were furnished on the order of the contractor, who, before the filing of the libel and without any knowledge by claimant of these unpaid claims, had been paid by this claimant for these materials and labor in full. It was alleged in conclusion that the lien claimed by libelants was claimed under sections 5953 and

5954 of Bellinger's Code and Statutes of Washington, that such a lien was in this instance void being in violation of the 8th section of the first article of the Constitution of the United States conferring upon Congress the power to regulate commerce among the several States, was an illegal burden upon interstate commerce, and in violation also of the 14th article of the Constitution of the United States as depriving claimant of its property without due process of law and without its equal protection, and was in violation of the second section of the third article of the Constitution conferring on the courts of the United States admiralty and maritime jurisdiction.

To the intervening libel of Fraser the same answer was made.

To each of these answers respectively the libelants and intervening libelant excepted as insufficient, and the whole of each, to constitute any answer or defense to the libel.

36 The exceptions were sustained, the claimant elected to stand on its answer and a decree was entered against it and its stipulators for the whole sum claimed in the libels.

Now, therefore, I do certify to the Supreme Court the following question: Were the alleged liens void and should the exceptions to the answers have been overruled, that is to say

(*a.*) Are sections 5953 and 5954 of Bellinger's Code and Statutes of the State of Washington as to ships owned and registered in other States in conflict with the 8th section of the first article of the Constitution of the United States.

(*b.*) Are they in violation of its 14th article as depriving the owner of his property without due process of law in so far as they attempt to compel the owners after payment to the contractor to pay the libelants also.

(*c.*) Are they in conflict with the second section of the third article of the Constitution of the United States conferring on the United States courts jurisdiction in admiralty.

C. H. HANFORD, *Judge.*

Indorsed: Certified questions on appeal. Filed in the U. S. district court dist. of Washington Jun- 7 1901 R. M. Hopkins, clerk, H. M. Walthew, deputy.

37 UNITED STATES OF AMERICA, *ss:*

To T. J. King & A. Winge, copartners as King & Winge, and to W. B. Fraser:

You and each of you are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden in the city of Washington, District of Columbia, within sixty days from the date of this citation, pursuant to an appeal filed in the clerk's office of the district court of the United States for district of Washington, wherein North American Transportation & Trading Co. as claimant of the steamship Roanoke is appellant and you and each of you are respondents, to show cause, if any there be why the decree in that appeal described should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 7th day of June, 1901.

[Seal U. S. District Court.]

C. H. HANFORD,
District Judge.

Service of the foregoing citation and copy thereof acknowledged this 7 day of June 1901.

PRESTON & EMBREE,
Proctors for King & Winge and W. B. Fraser.

Indorsed: Citation on appeal. Filed in the U. S. district court dist. of Washington Jun- 7 1901 R. M. Hopkins, clerk, A. N. Moore, deputy.

38 In the District Court of the United States for the District of Washington, Northern Division.

T. J. KING and A. WINGE, Copartners as King & Winge, Libelants,
vs.
STEAMSHIP "ROANOKE," NORTH AMERICAN TRANSPORTATION & TRADING Company, Claimant; W. B. Fraser, Intervenor. } No. 2018.

UNITED STATES OF AMERICA, } ss:
District of Washington, }

I, R. M. Hopkins, clerk of the district court of the United States for the district of Washington, do hereby certify that the foregoing thirty-eight (38) typewritten pages, numbered from one (1) to thirty-eight (38), both inclusive, contain in themselves, and not by reference, a complete record and transcript of the final record and of all the papers, exhibits and proceedings necessary to the hearing of the appeal of North American Transportation and Trading Company, claimant, in a case numbered 2018 in this court, entitled T. J. King and A. Winge, libelants, W. B. Fraser, intervening libelant, *vs.* S. S. Roanoke, North American Transportation and Trading Company, claimant.

I further certify that the cost of preparing and certifying the foregoing transcript is the sum of $11.75, and that said sum has been paid to me by the appellant North American Transportation and Trading Company. No opinion has been given or filed in said cause.

In witness whereof I have hereunto set my hand and affixed the seal of said district court, at my office, in the city of Seattle, in said district, this 17th day of June, 1901.

[Seal U. S. District Court, District of Washington.]

R. M. HOPKINS,
Clerk of the District Court of the United States for the District of Washington.

{ Ten-cent United States internal-revenue stamp, canceled Jun- 17, 1901. R. M. H. }

39 UNITED STATES OF AMERICA, *ss:*

To T. J. King & A. Winge, copartners as King & Winge, and to W. B. Fraser:

You and each of you are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden in the city of Washington, District of Columbia within sixty days from the date of this citation, pursuant to an appeal filed in the clerk's office of the district court of the United States for the district of Washington, wherein North American Transportation & Trading Co. as claimant of the steamship Roanoke *to* appellant and you and each of you are respondents, to show cause if any there be why the decree in that appeal described should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States this 7th day of June, 1901.

[Seal U. S. District Court, District of Washington.]

C. H. HANFORD,
District Judge.

Service of the foregoing citation and copy thereof acknowledged this 7 day of June, 1901.

PRESTON & EMBREE,
Proctors for King & Winge and W. B. Fraser.

40 [Endorsed:] Original No. 2018 H. In the district court of U. S. district of Washington T. J. King *et al.* libellants *vs.* Steamship Roanoke Citation on appeal Filed in the U. S. district court, dist. of Washington, Jun- 7 1901 R. M. Hopkins, clerk A. N. Moore deputy Bausman, Kelleher & Emory attorneys for —, rooms 626, 627 and 628 Bailey building Seattle, Washington.

Endorsed on cover: File No. 18,210. Washington D. C. U. S. Term No. 357. The North American Transportation and Trading Company as claimant of the steamship "Roanoke," appellant, *vs.* T. J. King and A. Winge, copartners as King & Winge, and W. B. Fraser. Filed June 26th, 1901.